IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4455 of 1998

Date of Decision: 26-02-2004

KANAIYALAL DAHYABHAI PATEL

Versus

GOVERNMENT OF INDIA

(For Full Cause Title, see Next Sheet)

Coram:

The Hon'ble Mr.Justice Bhawani Singh, Chief Justice

The Hon'ble Mr.Justice H.K.Rathod, Judge

Whether approved for reporting?

For the Employee MR N.D. GOHIL

For the Government of India MR ANANT S

PER: BHAWANI SINGH, CHIEF JUSTICE (ORAL):-

1. Kanaiyalal Dahyabhai Patel challenges the order of the respondents discontinuing his disability pension

---

Whether Reporters of Local Papers may be allowed to see the Judgment?

vide orders dated 17-11-1995 and 03-11-1997. He states that he hails from a poor family with aged parents, wife and children depending upon him, got into Indian Air Force on November 6, 1977 after having been found physically fit in the medical check ups and fitness tests. During the course of training, he underwent rigorous basic physical and trade test training. In January 1979, he was transferred to Air Force Station, Chandigarh. During this period, he was subjected to medical tests, and found fit in all respects. He had fallen sick in May 1979. He was admitted in Military Hospital, Chandigarh. Thereafter, he was transferred to Military Hospital, Delhi Contt., and to Military Hospital C.T.C Pune, for further treatment. This way, he remained under treatment in various Military Hospitals from May 1979 to June 1980. The respondent constituted Medical Board to assess petitioner's medical disability. According to Dr.Major K.M.Krishnarao, Urologist CH (SC) Pune, the petitioner's case is radiologically and bacteriologically confirmed pulmonary and urinary tract tuberculosis, therefore, he is unfit to make an efficient soldier. The disease was attributable to and contracted during service. Finally, the petitioner was boarded out of service on 24-12-1980 on the basis of medical report under Rule 15, Clause 2(c), Chapter III of Indian Air Force Rules, 1969.

2. The petitioner was granted disability pension for life from 13-07-1980 @ Rs.132/- per month, which demonstrates the seriousness of the ailments the petitioner suffered from. Thereafter, re-surveys were conducted from time to time, and finally on 13-07-1995, the petitioner is stated to have less than 20% disability. Accordingly, the disability pension has been stopped with effect from 15-07-1995 by order dated 17-11-1995. The petitioner appealed on 08-12-1995 against the decision dated 17-11-1995, which also came to be rejected by order dated 03-11-1997, and the petitioner was informed accordingly.

3. The petitioner, therefore, has challenged the decision of the respondents in this petition. The Respondent-4 filed affidavit-in-reply on January 28,

1999, affirmed by Lt.Col.P.K.Das, Classified Specialist Dermatology. The petitioner has filed rejoinder to the reply of Respondent-4.

4. The matter is considered on the basis of material available on the record and submissions advanced by learned counsel for the parties. Shri N.D.Gohil, learned counsel for the petitioner contends that the petitioner joined Indian Air Force, and discharged duties to the best of his ability, after passing rigorous tests and training courses. During the course of his service, he developed the disease of Pulmonary and Urinary Tract Tuberculosis. The degree of decease of the petitioner was found to be 100%, therefore, he was boarded out of service. Looking to the nature and extent of the decease, he was granted disability pension for life, which means, it was a serious case. Shri Anant S.Dave, the learned Standing Counsel for the Central Government, submits that the petitioner had been subjected to further medical examinations from time to time, so that, depending upon the degree of the disease, petitioner's disability pension could be continued or discontinued. The degree of disease has been found to be less than 20%, therefore, disability pension has been discontinued for some time, and in case, after re-examination, the disability is found to be 20% or more, it can be restored. Although, we do not understand the rationale behind the same, because the petitioner was relieved of his duties as he was afflicted with disease contracted during service. Moreover, even if the petitioner is declared to have less than 20% degree of disease, he is not restored in service. We think, once a person is boarded out of service, disability pension should continue for life, since he cannot get back into service. However, making this observation, to be considered by competent authority, and without saying anything finally on the rationality and reasonableness of their action, we proceed to deal with the case on different parameters.

5. The petitioner submits that he was called for examination, but put to blood test only, which does not satisfy the requirement of proper medical test, more so, of the disease with which he is suffering. No explanation in this regard has been offered by the respondents in their affidavit. The affidavit of Lt.Col.P.K.Das, Classified Specialist Dermatology, on behalf of the respondents throws light on the question. In paragraph 3.3, it is stated that:

"I say that the case of the petitioner was taken up with CCDA (P) (Controller of Defence Academy (Pensions) Allahabad, and accordingly the Invaliding Medical Board examined the petitioner originally on 12.7.1980 and at that time he was found to be suffering from Pulmonary Tuberculosis and Renal Tuberculosis and the consequent disability was assessed at 100% (to be reviewed after one year) and 20% (to be reviewed after six months) respectively on account of Pulmonary Tuberculosis and Renal Tuberculosis. I say based on this report of the Invaliding Medical Board the CCDA(P), Allahabad sanctioned him service elements @ Rs.87/- per month with effect from 13th July 1980 for life and Disability Elements Rs.45/- per month with effect from 13 July 1980 to 11 July 1981 for the accepted degree of disablement i.e. 100%. I say that the petitioner's case was subject to review from time to time. I say that accordingly, the petitioner's case was again reviewed on 14.1.1982 when the Medical Board assessed his disability due to Pulmonary Tuberculosis at 80% and Renal Tuberculosis at 6%. I say that thereafter on 12.7.1984 the petitioner's case was again reviewed when the Medical Board assessed his disability due to Pulmonary Tuberculosis at 60% and Nil disability due to Renal Tuberculosis. I say that the petitioner's case was again reviewed on 21.12.1990 when his disability due to Pulmonary Tuberculosis was assessed at 80% which was, however, accepted by the CCDA(P), Allahabad at 30%. I say that the petitioner's case was again reviewed on 15.7.1995 when his disability due to Pulmonary Tuberculosis was assessed by the Medical Re-Survey Board at 30%. However, I say that CCDA(P), Allahabad assessed his disability at less than 20% as a consequence of which the petitioner is not entitled to any pension on account of disability element."

From the above, it is crystal clear that the petitioner still suffers from 30% disability, therefore, there is no justification to reduce the disability to less than 20%, and discontinue pension of the petitioner on that basis. Therefore, assuming that the petitioner was medically examined, still his disability is more than 20%, and consequently, disability pension, with this background, could not have been discontinued. There is nothing on record, giving justification for reduction of disability from 30% to less than 20%.

6. Therefore, what emerges from the aforesaid discussion and perusal of the material on record, is that there is merit in this petition, and the same is allowed. The orders dated November 17, 1995, and November 3, 1997, are set aside. Disability pension of the petitioner is restored and be paid to him with arrears within a month. Rule is made absolute. No order as to costs.

(BHAWANI SINGH)
CHIEF JUSTICE

(H.K. RATHOD)
JUDGE

[sndevu]
ps